

IN THE MATTER OF:)
)
) Order No. 10 -xxx –ST/SW
)
 Wilburt Myric II)
)
 3100 Fieldcrest Drive)
)
 Montgomery, Alabama 36106)
)

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), the Alabama Scrap Tire Environmental Quality Act Code §§ 22-40A-1 to 22-40A-24(2006 Rplc. Vol.), the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum Supp.), and the ADEM Administrative Code promulgated there under, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-40A-11 (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act Ala. Code §§ 22-40A-1 to 22-40A-24 (2006 Rplc. Vol.).

3. Ala. Code §22-40A-4(a) (2006 Rplc. Vol.) states that “No person may accumulate more than 100 scrap tires, except as a permitted processor, registered receiver, or permitted landfill.”

4. Ala. Code §22-40A-4(b) (2006 Rplc. Vol.) states that “No person may expose accumulated scrap tires to the elements for more than 30 days.”

5. Ala. Code §22-40A-5(a) (2006 Rplc. Vol.) states that “accumulations of scrap tires for whatever purpose ... shall be removed by the person responsible for the creation or the maintenance of the accumulation, or if the person responsible is not determined, by the landowner...”

6. ADEM Admin. Code r. 335-4-4-.01 (1) states that “No person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in 335-4-3-.01(2), or a permitted Solid Wasted Disposal Facility (hereinafter SWDF). No person may expose scrap tires to the elements for more than thirty days”

7. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc.Vol.) and Ala. Code §§ 22-27-9 (2006 Rplc. Vol. and 2008 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum Supp.).

8. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2008 Cum. Supp.) defines an unauthorized dump (hereinafter “UAD”) as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

9. “Ala. Code § 22-27-4(b) (2006 Rplc. Vol. and 2008 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined, and enforced upon and regulated as provided in this article generally, and Section 22-27-11, specifically.”

10. Ala. Code § 22-27-10(b) (2006 Rplc. Vol. and 2008 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

11. ADEM Admin. Code r. 335-13-1-.13(1)(a) declares that open or unauthorized dumps are prohibited.

12. On February 6, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized scrap tire accumulation/solid waste dump, located on the property of Mr. Wilburt Myric II (hereinafter “Mr. Myric”) on Day Street Road, Montgomery, Montgomery County, Alabama. Property ownership was determined by a review of Montgomery County records. The accumulation consisted of approximately 250 scrap tires. The UAD consisted of household wastes and Construction/Demolition wastes.

13. On April 20, 2009, the Department issued a Notice of Deficiency (hereinafter “NOD”) to Mr. Myric for operating an unauthorized scrap tire accumulation/solid waste dump.

14. The Department did not receive a response to the April 20, 2009, NOD.

15. On June 29, 2009, the Department issued a Notice of Violation (hereinafter "NOV") letter to Mr. Myric which requested a response to the April 20, 2009, NOD.

16. The Department did not receive a response to the June 29, 2009, NOV.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Mr. Myric did not comply with the requirements applicable to the proper management of scrap tires or solid waste disposal. The Department is unaware of any irreparable harm to the environment as a

result of these violations. This unauthorized accumulation of scrap tires may pose a threat to human health due to the possible presence of disease vectors.

B. THE STANDARD OF CARE: Mr. Myric failed to demonstrate a standard of care commensurate with applicable scrap tire management requirements and failed to abide by applicable solid waste disposal requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Myric has realized a significant economic benefit as a result of the violations noted. However, Mr. Myric did not incur costs associated with operating in accordance with Division 4 Regulations, which would include costs associated with proper transportation and disposal of solid waste and scrap tires, or Division 13 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by Mr. Myric to mitigate potential effects upon the environment and human health that may have been created as a result of the unauthorized accumulation of scrap tires and the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of scrap tire or solid waste laws and regulations by Mr. Myric.

F. THE ABILITY TO PAY: Mr. Myric has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil

penalty in the amount of \$6,250.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other scrap tire accumulations and UAD (See Attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$100 - \$25,000
Unauthorized Scrap Tire Accumulation	\$100 - \$25,000
Additive Costs per Statute	\$5 per scrap tire

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-11, 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Mr. Myric shall pay to the Department a civil penalty in the amount of \$6,250.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Myric's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Myric shall cease and desist from operating an unauthorized scrap tire accumulation and an UAD.

C. That, within thirty days of the issuance of this Order, Mr. Myric shall submit a remediation plan to the Department in accordance with Division 4 and Division 13 regulations. This plan shall include a schedule for remediation completion. Remediation activities shall not commence until the remediation plan is approved by the Department. Mr. Myric shall document remediation activities by submitting the following to the Department within thirty days of remediation completion:

1. Time period in which the remediation activities occurred.
2. Total volume of scrap tires and solid waste removed from the property.
3. A copy of waste receipts documenting that all scrap tires were properly disposed of or beneficially reused in an approved manner and that all regulated solid waste was properly disposed.
4. Documentation that all regulated wastes were removed from the property.
5. Photographs of the site, before, during, and after remediation.

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Myric for the violations cited herein.

E. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Myric for

recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2010.

John P. Hagood
Director

CERTIFICATE OF SERVICE

I, _____, hereby certify that I have this date served the foregoing Administrative Order on _____ by regular United States Mail, properly addressed and postage prepaid to:

Mr. Wilburt Myric II
3100 Fieldcrest Drive
Montgomery, Alabama 36106

Done this _____ day of _____, 2010__.

ATTACHMENT A

Penalty Calculation Worksheet

Wilburt Myric II
3100 Fieldcrest Drive
Montgomery, AL 36106

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-4-4.01 (1) states no person may accumulate more than 100 scrap tires. (250)	1	\$1,250	\$0	\$0
ADEM Admin Code r. 335-13-1-.13 (1) (a) declares that open or unauthorized dumps are prohibited.	1	\$5,000	\$0	\$0
Totals:	2	\$6,250	\$0	\$0

Economic Benefit*: \$0

Mitigating Factors*: \$0

Ability to Pay*: \$0

Other Factors*: \$0

Total Civil Penalty: \$6,250

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors